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Supreme Court, U.S.
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No. 96-1921
In The
Supreme Court of the United States
October Term, 1996

Sidney J. Brown, *et al.*,
Petitioners,
v.
Resolution Trust Corporation,
Respondent.

On Petition For Writ of Certiorari
To The United States Court of Appeals
For the District of Columbia

PETITIONERS' REPLY BRIEF

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PETITIONERS' REPLY BRIEF

I. INTRODUCTION

Respondent's Brief in Opposition ("Respondent's Brief") does not dispute the legal significance of this case or the grounds for review by this Court. Respondent's Brief does, however, distort material facts and make misleading references to clearly inapplicable statutory provisions in a blatant attempt to prejudice this Court against Brown's Petition and to mask the important questions of first impression which should be reviewed and settled by this Court.

II. RESPONDENT DISTORTS THE FACTS OF THIS CASE

A. Brown Never Received A "Loan" Or Any Other Money From Respondents

On June 20, 1988, Petitioner Nattchase Associates Limited Partnership ("Nattchase") purchased from Respondent Sajacito two parcels of property (the "Properties") that Sajacito owned for a price of $45 million. Nattchase paid $9 million in cash at settlement, plus closing costs, and financed the balance of the purchase price with a $36 million deferred purchase money note and deed of trust (the "Nattchase note") provided by Sajacito, which was wholly owned by Respondent San Jacinto. Neither Sajacito or San Jacinto ever forwarded any monies to Nattchase or any of the other Petitioners. Thus, contrary to Respondent's statements in its Brief, Brown did not borrow $36 million from San Jacinto. See Respondent's Brief at 2.

B. Brown Contests All Of The Court's Holdings Regarding Brown's Damage Allegations

Next, Respondent states that, "Petitioners do not contest the court's separate holding that any damages attributable to their own initial investment and subsequent default 'were not caused by the allegedly wrongful exclusion from bidding and therefore cannot confer standing to sue [the] RTC.'" Respondent's Brief at 6, n. 3. This simply is not true. Brown certainly contests the D.C. Circuit's dicta regarding the cause of his damages. However, because the basis of the D.C. Circuit's denial of Brown's appeal was its incorrect ruling that Brown's monetary claims were too speculative to confer standing, Brown addressed his Petition to this erroneous holding and not the court's dicta.

III. RESPONDENT MAKES MISLEADING REFERENCES TO IRRELEVANT STATUTORY PROVISIONS

On page 8 of its Brief, and again on page 9 in footnote 6, Respondent asserts that 12 U.S.C. 1441a(f)(1)(A)(i) prohibits individuals like Brown from bidding on RTC assets. Petitioner's reference to this statutory provision is a patent diversionary tactic and should be ignored by this Court. Section 1441a(f)(1)(A) has no application to Brown and Respondent knows it. Section 1441a(f)(1)(A)

states in its entirety:

> (1) The Corporation shall prescribe regulations to prohibit the sale of assets of a failed institution by the Corporation to any person who -
>
> > (A)(i) has defaulted, or was a member of a partnership or an officer or director of a corporation which has defaulted, on 1 or more obligations the aggregate amount of which exceed $1,000,000 to such failed institution;
> >
> > (ii) has been found to have engaged in fraudulent activity in connection with any obligation referred to in clause (i); and
> >
> > (iii) proposes to purchase any such asset in whole or in part through the use of the proceeds of a loan or advance of credit from the Corporation or from any institution subject to the jurisdiction of the Corporation pursuant to paragraph (3)(A). (Emphasis supplied).

12 U.S.C. § 1441a(f)(1)(A). This provision is written in the conjunctive; accordingly each of the three predicates must exist for it to be applicable. Dispositively, no one, not the RTC, FDIC or any other federal or state agency, has ever even accused Brown of engaging in fraudulent activity, much less "found" him to have done so. Thus, § 1441a(f)(1)(A) has absolutely no application to Brown and Respondent's reference to it was in conscious disregard of this fact.

IV. CONCLUSION

For the reasons set forth above and in Brown's Petition For Writ Of Certiorari, Brown respectfully requests that this Court grant his Petition.

Respectfully submitted,

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